

NOV - 9 2007
NOV 9 2007
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

AC

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

ANTHONY MARANO COMPANY,

Plaintiff,

v.

**BIMEX, INC., an Illinois corporation d/b/a
Roselle International Food Market,
MIROSLAW KUBAS, WOJCIECH
DZIEWONSKI, KAZIMIERZ
KONIARCZYK, and ZBIGNIEW
KRUCZALAK,**

Defendants.

**07CV6382
JUDGE LINDBERG
MAG. JUDGE VALDEZ**

COMPLAINT
(To enforce payment from Produce Trust)

Plaintiff, ANTHONY MARANO COMPANY (hereinafter "Marano") for its complaint against BIMEX, INC., an Illinois corporation d/b/a Roselle International Food Market, Miroslaw Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak (hereinafter collectively referred to as "Defendants") allege:

Jurisdiction and Venue

1. Jurisdiction is based on Section on Section 5(c)(5) of the Perishable Agricultural Commodities Act, 7 U.S.C. §499e(c)(5) (hereafter "the PACA"), 28 U.S.C. §1331 and 28 U.S.C. §1332.

2. Venue in this District is based on 28 U.S.C. § 1391 in that (a) Plaintiff's claims arose in this District and (b) Defendants' principal places of business are in this district.

3. Plaintiff Marano is an Illinois corporation with its principal place of business in

Chicago, Illinois. Plaintiff is engaged in the business of buying and selling wholesale quantities of perishable agricultural commodities (hereafter "produce") in interstate commerce. At all times pertinent herein, Plaintiff was subject to and licensed under the PACA as a dealer under PACA license number 19189931.

4. (a) BIMEX, INC., an Illinois corporation d/b/a Roselle International Food Market (hereinafter "BIMEX, INC."), having its principal place of business in Roselle, Illinois at all times pertinent herein, was subject to the provisions of the PACA.

(b) Miroslaw Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak, upon information and belief, were at all times pertinent herein, dealers and commission merchants and subject to the PACA, were also directors, officers, shareholders and/or principals of BIMEX, INC., who carried out the day to day operations of BIMEX, INC., during the period of time in question.

General Allegations

5. This action is brought to enforce the trust provisions of P.L. 98-273, the 1984 amendment to Section 5 of the PACA, 7 U.S.C. § 499 e(c).

6. Between September 20, 2007 and October 15, 2007, Marano sold and delivered to Defendants, in interstate commerce, \$21,890.25 worth of produce (see Statement attached hereto as "Exhibit 1").

7. Defendants have failed to pay for the produce when payment was due, despite repeated demands and presently owe Marano \$21,890.25, plus costs and interest.

8. At the time of receipt of the produce, Plaintiff became beneficiary in a statutory trust designed to assure payment to produce suppliers. The trust consists of all produce or produce

related assets, including all funds commingled with funds from other sources and all assets procured by such funds, in the possession or control of Defendants since the creation of this trust.

9. Plaintiff Marano preserved its respective interest in the PACA trust in the amount of \$21,890.25, by delivering invoices to Defendants which contain the language required by 7 U.S.C. §499e(c)(4).

10. Defendants' failure and inability to pay shows that Defendants are failing to maintain sufficient assets in the statutory trust to pay Plaintiff and are dissipating trust assets.

Count I

(Failure to Pay Trust Funds)

11. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 10 above as if fully set forth herein.

12. The failure of Defendants to make payment to Plaintiff of trust funds in the amount of \$21,890.25 from the statutory trust is a violation of the PACA and PACA regulations, and is unlawful.

WHEREFORE, Plaintiff requests an order enforcing payment from the trust by requiring Defendants, BIMEX, INC., an Illinois corporation d/b/a Roselle International Food Market, Miroslaw Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak, to make immediate payment of \$21,890.25 to Marano.

Count II

(Failure to Pay for Goods Sold)

13. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 12 above as if fully set forth herein.

14. Defendants failed and refused to pay Plaintiff \$21,890.25 owed to Plaintiff for produce received by Defendants from Plaintiff.

WHEREFORE, Plaintiff requests judgment for Marano and against Defendants, BIMEX, INC., an Illinois corporation d/b/a Roselle International Food Market, Miroslaw Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak in the amount of \$21,890.25, jointly and severally.

Count III

(Unlawful Dissipation of Trust Assets by Corporate Officials -Miroslaw Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak)

15. Plaintiff incorporates each and every allegation set forth in paragraph 1 to 14 above as if fully set forth herein.

16. Miroslaw Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak were directors, officers, shareholders and/or principals of BIMEX, INC. during the period of time in question.

17. Miroslaw Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak failed to direct the corporation to fulfill its statutory duties to preserve PACA trust assets and pay Plaintiff for the produce it supplied.

18. Miroslaw Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak's failure to direct the corporation to maintain PACA trust assets and pay Plaintiff for the produce it supplied was an unlawful dissipation of trust assets by a corporate official.

19. As a result of said unlawful dissipation of trust assets, Plaintiff has been deprived of its rights as beneficiaries in the produce trust and has been denied payment for the produce it supplied.

WHEREFORE, Plaintiff request judgment for Marano and against Miroslaw Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak in the amount of \$21,890.25, jointly and severally.

Count IV

(Failure to Pay Trust Funds - Miroslaw Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak)

20. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 19 above as if fully set forth herein.

21. BIMEX, INC. is an Illinois corporation.

22. Miroslaw Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak assisted in the operation of BIMEX, INC., and, as individuals, were dealers and commission merchants subject to the PACA.

23. Miroslaw Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak's failure to make payment to Plaintiff of trust funds in the amount of \$21,890.25 to Marano is a violation of the PACA and PACA regulations and is unlawful.

WHEREFORE, Plaintiff requests judgment for Marano and against Miroslaw Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak in the amount of \$21,890.25 and an order against Miroslaw Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak enforcing payment from the trust in said amount.

Count V

(Interest and Attorney's Fees)

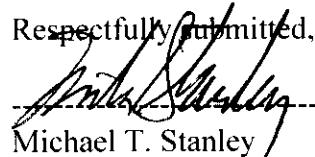
24. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 23 above as if fully set forth herein.

25. As a result of Defendants' failure to make full payment promptly of \$21,890.25 to Marano, Plaintiff has lost the use of said money.

26. As a further result of Defendants' failure to make full payment promptly of \$21,890.25 to Marano, Plaintiff has been required to pay attorney's fees and costs in order to bring this action to require Defendants to comply with their statutory duties.

31. Invoices for produce sold to Defendants in this matter call for interest and attorney fees.

WHEREFORE, Marano requests judgment against each of the Defendants, BIMEX, INC., an Illinois corporation d/b/a Roselle International Food Market, Miroslaw Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak, jointly and severally, for prejudgment and post-judgment interest, costs and attorneys fees.

Respectfully submitted,

Michael T. Stanley

Michael T. Stanley
Lawrence B. Ordower
Ordower & Ordower, P.C.
One N. LaSalle Street, Ste. 1300
Chicago, IL 60602
(312) 263-5122

C:\Documents and Settings\Michael Stanley\My Documents\M Stanley\Marano\Bimex\AMCvBimex\Complaint110707.wpd


ANTHONY MARANO COMPANY

3000 South Ashland Avenue • Suite 100 • Chicago, Illinois 60608-5348
Phone (773) 321-7500 • Fax (773) 321-7578

PLEASE CHECK () INVOICES BEING PAID
AND RETURN THIS PORTION WITH YOUR
REMITTANCE

-- TEAR AT PERFORATION

CUSTOMER
NO.
ROSELLE INT FOOD MKT/BIMEX INC R108
825 E. NERGE ST
ROSELLE, IL 60172

STATEMENT
DATE
11/03/2007

CUSTOMER
NO.
R108
11/03/2007
CUSTOMER NAME
ROSELLE INT FOOD MKT/BIMEX I

"The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."

Page 1

TRANS N DATE	INVOICE NO.	CHARGES AMOUNT	PAYMENT AMOUNT	BALANCE AMOUNT	INVOICE NO. ✓	INVOICE AMOUNT	BALANCE AMOUNT
09/20/2007	A077601	-148.00	Ref:A0766-44	-148.00	A077601	-148.00	-148.00
09/26/2007	A084906	616.25		616.25	A084906	616.25	468.25
09/26/2007	A084908	150.00		150.00	A084908	150.00	618.25
09/26/2007	A084918	252.00		252.00	A084918	252.00	870.25
09/26/2007	A084921	374.00		374.00	A084921	374.00	1,244.25
09/26/2007	A084999	572.00		572.00	A084999	572.00	1,816.25
09/26/2007	A085026	301.50		301.50	A085026	301.50	2,117.75
09/28/2007	A087222	-18.00	Ref:A0849-06	-18.00	A087222	-18.00	2,099.75
09/28/2007	A088990	146.00		146.00	A088990	146.00	2,245.75
09/28/2007	A088994	222.00		222.00	A088994	222.00	2,467.75
09/28/2007	A089009	741.75		741.75	A089009	741.75	3,209.50
09/28/2007	A089019	106.00		106.00	A089019	106.00	3,315.50
09/28/2007	A089027	383.50		383.50	A089027	383.50	3,699.00
09/28/2007	A089036	498.00		498.00	A089036	498.00	4,197.00
09/28/2007	A089080	93.00		93.00	A089080	93.00	4,290.00
10/01/2007	A089153	524.00		524.00	A089153	524.00	4,814.00
10/01/2007	A089159	183.00		183.00	A089159	183.00	4,997.00
10/01/2007	A092191	259.00		259.00	A092191	258.00	5,255.00
10/01/2007	A092196	697.00		697.00	A092196	697.00	5,952.00
10/01/2007	A092197	385.00		385.00	A092197	385.00	6,337.00
10/01/2007	A092211	180.00		180.00	A092211	180.00	6,517.00
10/01/2007	A092243	538.50		538.50	A092243	538.50	7,055.50
10/01/2007	A092307	24.00		24.00	A092307	24.00	7,079.50
10/01/2007	A092444	110.00		110.00	A092444	110.00	7,189.50
10/01/2007	A092479	178.64		178.64	A092479	178.64	7,368.14
10/01/2007	A092521	453.00		453.00	A092521	453.00	7,821.14
10/01/2007	A092523	26.00		26.00	A092523	26.00	7,847.14
10/02/2007	A094026	-12.00	Ref:A0921-96	-12.00	A094026	-12.00	7,835.14

Continued

TERMS: NET 10 DAYS FOLLOWING DATE OF PURCHASES*

* A finance charge of 1 - 1/2% per month (annual fee 18%) will be charged on past due balances over 30 days. In the event legal action is commenced to collect the balance due under this invoice, the prevailing party shall be entitled to recover all Court costs and reasonable attorneys' fees incurred thereby.


ANTHONY MARANO COMPANY

 3000 South Ashland Avenue • Suite 100 • Chicago, Illinois 60608-5348
 Phone (773) 321-7500 • Fax (773) 321-7578

 PLEASE CHECK () INVOICES BEING PAID
 AND RETURN THIS PORTION WITH YOUR
 REMITTANCE

← TEAR AT PERFORATION

 ROSELLE INT FOOD MKT/BIMEX INC R108
 825 E. NERGE ST
 ROSELLE, IL 60172

 CUSTOMER
NO.
R108
STATEMENT
DATE
11/03/2007

 CUSTOMER
NO.
R108
STATEMENT
DATE
11/03/2007
CUSTOMER NAME
ROSELLE INT FOOD MKT/BIMEX I

"The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."

Page 2

TRANSN DATE	INVOICE NO.	CHARGES AMOUNT	PAYMENT AMOUNT	BALANCE AMOUNT	INVOICE NO.	INVOICE AMOUNT	BALANCE AMOUNT
10/02/2007	A092814	343.50		343.50	A092814	343.50	8,178.64
10/03/2007	A094287	-18.00	Ref:A0921-97	-18.00	A094287	-18.00	8,160.64
10/03/2007	A095006	273.00		273.00	A095006	273.00	8,433.64
10/03/2007	A095016	203.25		203.25	A095016	203.25	8,636.89
10/03/2007	A095021	208.00		208.00	A095021	208.00	8,844.89
10/03/2007	A095024	318.50		318.50	A095024	318.50	9,163.39
10/03/2007	A095029	304.00		304.00	A095029	304.00	9,467.39
10/03/2007	A095037	487.50		487.50	A095037	487.50	9,954.89
10/03/2007	A095040	450.00		450.00	A095040	450.00	10,404.89
10/03/2007	A095044	548.00		548.00	A095044	548.00	10,952.89
10/03/2007	A095181	24.00		24.00	A095181	24.00	10,976.89
10/05/2007	A098503	258.00		258.00	A098503	258.00	11,234.89
10/05/2007	A098506	673.50		673.50	A098506	673.50	11,908.39
10/05/2007	A098515	534.50		534.50	A098515	534.50	12,442.89
10/05/2007	A098517	140.00		140.00	A098517	140.00	12,582.89
10/05/2007	A098541	412.00		412.00	A098541	412.00	12,994.89
10/05/2007	A098615	629.25		629.25	A098615	629.25	13,624.14
10/05/2007	A098781	-18.00		18.00	A098781	18.00	13,642.14
10/05/2007	A098908	32.00		32.00	A098908	32.00	13,674.14
10/05/2007	A098953	12.00		12.00	A098953	12.00	13,686.14
10/08/2007	A099981	-32.00	Ref:A0950-37	-32.00	A099981	-32.00	13,654.14
10/08/2007	A099140	15.75		15.75	A099140	15.75	13,669.89
10/08/2007	A101806	332.00		332.00	A101806	332.00	14,001.89
10/08/2007	A101813	244.00		244.00	A101813	244.00	14,245.89
10/08/2007	A101845	411.50		411.50	A101845	411.50	14,657.39
10/08/2007	A101865	274.00		274.00	A101865	274.00	14,931.39
10/08/2007	A101876	471.00		471.00	A101876	471.00	15,402.39
10/08/2007	A101878	539.00		539.00	A101878	539.00	15,941.39

Continued

TERMS: NET 10 DAYS FOLLOWING DATE OF PURCHASES*

* A finance charge of 1 - 1/2% per month (annual fee 18%) will be charged on past due balances over 30 days. In the event legal action is commenced to collect the balance due under this invoice, the prevailing party shall be entitled to recover all Court costs and reasonable attorney's fees incurred thereby.

Case 1:07-cv-06392 Document 1 Filed 11/09/2007 Page 9 of 9 FINANCIAL ADVICE


STATEMENT
ANTHONY MARANO COMPANY

 3000 South Ashland Avenue • Suite 100 • Chicago, Illinois 60608-5348
 Phone (773) 321-7500 • Fax (773) 321-7578

 ROSELLE INT FOOD MKT/BIMEX INC R108
 825 E. NERGE ST
 ROSELLE, IL 60172

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

 CUSTOMER NO.
 STATEMENT DATE
 11/03/2007

 CUSTOMER NO.
 STATEMENT DATE
 11/03/2007

 CUSTOMER NAME
 ROSELLE INT FOOD MKT/BIMEX I

 AMOUNT PAID

Page 3

TRANS'N DATE	INVOICE NO. ✓ AGE	CHARGES AMOUNT	PAYMENT AMOUNT	BALANCE AMOUNT	INVOICE NO. ✓	INVOICE AMOUNT	BALANCE AMOUNT
10/08/2007	A101882	244.86		244.86	A101882	244.86	16,186.25
10/08/2007	A101909	32.50		32.50	A101909	32.50	16,218.75
10/08/2007	A101917	656.00		656.00	A101917	656.00	16,874.75
10/10/2007	A104769	180.00		180.00	A104769	180.00	17,054.75
10/10/2007	A104773	136.00		136.00	A104773	136.00	17,190.75
10/10/2007	A104778	322.00		322.00	A104778	322.00	17,512.75
10/10/2007	A104797	432.00		432.00	A104797	432.00	17,944.75
10/10/2007	A104804	709.00		709.00	A104804	709.00	18,653.75
10/10/2007	A104806	720.25		720.25	A104806	720.25	19,374.00
10/10/2007	A104875	286.00		286.00	A104875	286.00	19,660.00
10/10/2007	A104899	22.00		22.00	A104899	22.00	19,682.00
10/12/2007	A108286	-88.00	Ref A101882	-88.00	A108286	-88.00	19,594.00
10/12/2007	A108281	180.00		180.00	A108281	180.00	19,774.00
10/12/2007	A108285	298.00		298.00	A108285	298.00	20,072.00
10/12/2007	A108316	284.75		284.75	A108316	284.75	20,356.75
10/12/2007	A108319	562.50		562.50	A108319	562.50	20,919.25
10/12/2007	A108441	349.00		349.00	A108441	349.00	21,268.25
10/12/2007	A108503	296.00		296.00	A108503	296.00	21,564.25
10/12/2007	A108578	30.00		30.00	A108578	30.00	21,594.25
10/12/2007	A108622	22.00		22.00	A108622	22.00	21,616.25
10/12/2007	A108751	32.00		32.00	A108751	32.00	21,648.25
10/12/2007	A108753	40.00		40.00	A108753	40.00	21,688.25
10/15/2007	A108843	202.00		202.00	A108843	202.00	21,890.25
			Final Balance	21,890.25			

TERMS: NET 10 DAYS FOLLOWING DATE OF PURCHASES*

* A finance charge of 1 - 1/2% per month (annual fee 18%) will be charged on past due balances over 30 days. In the event legal action is commenced to collect the balance due under this invoice, the prevailing party shall be entitled to recover all costs of collection, including attorney's fees and court costs.